

REMARKS

This responds to the Office Action dated June 1, 2007.

Claim 1 is amended. Claims 1-20 are now pending in this application.

Objection to Specification

The specification has been amended to update the current status of the priority application. No new matter has been added.

Double Patenting Rejection

Claims 1 and 18-19 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 5, and 11 of U.S. Patent No. 6,662,048. Applicant does not admit that the claims are obvious in view of U.S. Patent No. 6,662,048. However, a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(b)(iv) is enclosed herewith to obviate these rejections.

§102 and §103 Rejection of the Claims

Claims 1, 4, 5, and 12-20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Bui et al. (U.S. Patent No. 6,396,727). Claims 1 and 6 were rejected under 35 U.S.C. § 102(b) as being anticipated by Fearnot et al. (U.S. Patent No. 5,005,574). Claims 2 and 3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bui et al. (U.S. Patent No. 6,396,727) in view of Salem (U.S. Patent No. 4,488,824). Claims 7-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fearnot et al. (U.S. Patent No. 5,005,574). The rejections are traversed and reconsideration is respectfully requested.

Before the present amendment, claim 1 recited a medical device adapted for implantation into a patient that included a temperature sensor located within a housing for the device. Neither of the Bui et al. or Fearnot et al. references teach locating a temperature sensor within a device housing. The Fearnot et al. reference describes a thermistor 41 incorporated into a lead for disposition in the right ventricle (col. 7, lines 17-21). As pointed out in the Office Action, the Bui et al. reference describes a temperature sensor 216 that includes a sensing head, a cable, and

a connector for connecting the sensor to circuitry within the device housing (which housing is not adapted for implantation). Applicant thus believes that claims 1, 4-6, and 12-20 before this amendment were not anticipated by the cited references. Claim 1 has been amended herein, however, in order to positively recite the implantable housing and to specifically state that the temperature sensor, sampling circuitry, and controller are contained within the implantable housing. Such a structure is not taught by the cited references, nor do those references teach anything that would motivate one of ordinary skill in the art to modify the devices described therein in a manner similar to that claimed by Applicant. The Salem reference only deals with temperature measurement circuitry in general and contains no teaching that would suggest the desirability locating a temperature sensor within an implantable device housing nor the numerous advantages thereof as described in the present specification. The recitations of dependent claims 2-20 are also asserted to be neither taught nor suggested by the prior art of record in the context of their combination with the subject matter recited by independent claim 1. For example, some of the dependent claims (e.g., claims 7-11) recite features that are only relevant when device operation can affect temperature measurement due to the temperature sensor being located within the device housing. Applicant respectfully submits that claims 1-20 are patentable over the prior art of record.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (847) 432-7302 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date October 1, 2007

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 1 day of October 2007.

Kate Cannon

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